

# House Study Bill 175

HOUSE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
PUBLIC SAFETY BILL BY  
CHAIRPERSON BAUDLER)

Passed House, Date \_\_\_\_\_ Passed Senate, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

## A BILL FOR

1 An Act regulating the precursor substances relating to  
2 amphetamine and methamphetamine, and providing penalties and  
3 effective dates.  
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:  
5 TLSB 2631HC 81  
6 jm/pj/5

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1 1 Section 1. Section 124.212, subsection 4, Code 2005, is  
1 2 amended by striking the subsection and inserting in lieu  
1 3 thereof the following:  
1 4 4. PRECURSORS TO AMPHETAMINE AND METHAMPHETAMINE. Unless  
1 5 specifically excepted in paragraph "d" or listed in another  
1 6 schedule, any material, compound, mixture, or preparation  
1 7 which contains any quantity of the following precursors to  
1 8 amphetamine or methamphetamine, including their salts, optical  
1 9 isomers, and salts of their optical isomers:  
1 10 a. Ephedrine.  
1 11 b. Phenylpropanolamine.  
1 12 c. Pseudoephedrine. A pharmacy shall not sell more than  
1 13 four thousand milligrams of pseudoephedrine to a person within  
1 14 a thirty-day period, unless the person has a prescription for  
1 15 a pseudoephedrine product in excess of that quantity.  
1 16 d. Any material, compound, mixture, or preparation which  
1 17 contains two hundred forty milligrams or less of  
1 18 pseudoephedrine, its salts, optical isomers, and salts of its  
1 19 optical isomers, is excepted from this schedule and may be  
1 20 sold over the counter pursuant to section 126.23A.  
1 21 Sec. 2. NEW SECTION. 124.309 PEACE OFFICER ISSUANCE OF  
1 22 SUBPOENA DUCES TECUM.  
1 23 1. A certified peace officer, with the approval of the  
1 24 officer's chief law enforcement officer or the chief law  
1 25 enforcement officer's designee, may issue a subpoena duces  
1 26 tecum requiring a pharmacy to produce any records relating to  
1 27 schedule V pseudoephedrine products.  
1 28 2. A subpoena duces tecum may only be issued pursuant to  
1 29 this section if the records being subpoenaed are relevant to  
1 30 an ongoing law enforcement investigation.  
1 31 3. If any person subpoenaed refuses to produce the  
1 32 records, the peace officer may apply to the district court  
1 33 having jurisdiction over that person for the enforcement of  
1 34 the subpoena. If the court finds that the subpoena should be  
1 35 obeyed, the court shall enter an order requiring obedience to  
2 1 the subpoena, and refusal to obey the court order is subject  
2 2 to punishment for contempt.  
2 3 Sec. 3. Section 126.23A, Code 2005, is amended by striking  
2 4 the section and inserting in lieu thereof the following:  
2 5 126.23A PSEUDOEPHEDRINE == RETAIL RESTRICTIONS.  
2 6 1. As used in this section, "retailer" means a person or  
2 7 business entity engaged in this state in the business of  
2 8 selling products on a retail basis. An "employee of a  
2 9 retailer" means any employee, contract employee, or agent of  
2 10 the retailer.  
2 11 2. A retailer shall sell and a purchaser shall only  
2 12 purchase pseudoephedrine products in the following manner:  
2 13 a. A retailer or an employee of a retailer shall not sell  
2 14 to a person and a person shall not purchase in a twenty-four=  
2 15 hour period more than one package of a product containing  
2 16 pseudoephedrine.  
2 17 b. A retailer or an employee of a retailer shall not sell

2 18 a package containing pseudoephedrine if the package contains  
2 19 more than two hundred forty milligrams of pseudoephedrine,  
2 20 unless the retailer is a pharmacy and the product is regulated  
2 21 and sold as a schedule V controlled substance under section  
2 22 124.212.

2 23 c. A retailer who offers for sale a product containing  
2 24 pseudoephedrine shall offer such product for sale in a locked  
2 25 cabinet or behind a sales counter where the public is unable  
2 26 to reach the product and where the public is not permitted.

2 27 d. A retailer or an employee of a retailer shall require a  
2 28 purchaser to present a government-issued photo identification  
2 29 card identifying the purchaser prior to purchasing a product  
2 30 containing pseudoephedrine. A purchaser shall also sign a  
2 31 logbook prior to purchase and input the purchaser's name and  
2 32 address into the logbook. Any certified peace officer,  
2 33 pursuant to a policy adopted by the department of public  
2 34 safety, shall have access to the logbook.

2 35 e. A retailer shall provide notification in a clear and  
3 1 conspicuous manner in a location where a product containing  
3 2 pseudoephedrine is offered for sale stating the following:  
3 3 Iowa law prohibits the purchase of more than one package  
3 4 containing pseudoephedrine in a twenty-four-hour period unless  
3 5 the purchase is made through a pharmacist. If you purchase a  
3 6 product containing pseudoephedrine, you are required to sign a  
3 7 logbook which shall be accessible to law enforcement officers.

3 8 f. A retailer shall not sell more than four thousand  
3 9 milligrams of pseudoephedrine to a person within a thirty-day  
3 10 period.

3 11 g. A retailer shall, upon request by a certified peace  
3 12 officer, make accessible to the officer the following records  
3 13 recorded during the past twelve months:

3 14 (1) The number of pseudoephedrine products purchased from  
3 15 a wholesaler or distributor.

3 16 (2) The number of pseudoephedrine products stolen from the  
3 17 retailer.

3 18 (3) The number of pseudoephedrine products sold by the  
3 19 retailer.

3 20 (4) The number of pseudoephedrine products damaged and  
3 21 disposed of through other means than a sale to a customer.

3 22 3. Enforcement of this section shall be implemented  
3 23 uniformly throughout the state. A political subdivision of  
3 24 the state shall not adopt an ordinance regulating the display  
3 25 or sale of products containing pseudoephedrine. An ordinance  
3 26 adopted in violation of this section is void and unenforceable  
3 27 and any enforcement activity of an ordinance in violation of  
3 28 this section is void.

3 29 4. A pharmacy that sells a product that contains two  
3 30 hundred forty milligrams or less of pseudoephedrine shall  
3 31 comply with the provisions of this section with respect to the  
3 32 sale of such product.

3 33 5. If a retailer or an employee of a retailer violates any  
3 34 provision of this section, the state, or a city or county, may  
3 35 assess a civil penalty against the retailer upon hearing and  
4 1 notice as provided in section 126.23B.

4 2 6. An employee of a retailer or a purchaser who commits a  
4 3 violation of subsection 2 commits a simple misdemeanor  
4 4 punishable by a scheduled fine under section 805.8C,  
4 5 subsection 6.

4 6 Sec. 4. NEW SECTION. 126.23B CIVIL PENALTY.

4 7 1. The state, a city, or a county may enforce section  
4 8 126.23A, after giving the retailer an opportunity to be heard  
4 9 upon ten days' written notice stating the alleged violation  
4 10 and the time and place at which the retailer may appear and be  
4 11 heard.

4 12 2. For a violation of section 126.23A by the retailer or  
4 13 an employee of the retailer a civil penalty shall be assessed  
4 14 against the retailer as follows:

4 15 a. For a first violation, the retailer shall be assessed a  
4 16 civil penalty in the amount of three hundred dollars.

4 17 b. For a second violation within a period of two years,  
4 18 the retailer shall be assessed a civil penalty in the amount  
4 19 of one thousand five hundred dollars.

4 20 c. For a third violation within a period of three years,  
4 21 the retailer shall be assessed a civil penalty in the amount  
4 22 of two thousand dollars. The retailer may also be prohibited  
4 23 from selling pseudoephedrine for up to three years from the  
4 24 date of assessment of the civil penalty.

4 25 d. For a fourth or subsequent violation within a period of  
4 26 three years, the retailer shall be assessed a civil penalty in  
4 27 the amount of three thousand dollars. On a fourth or  
4 28 subsequent violation, the retailer shall be prohibited from

4 29 selling pseudoephedrine products for three years from the date  
4 30 of the assessment of the civil penalty.

4 31 3. The state or local authority that takes legal action  
4 32 against a retailer under this section shall report the  
4 33 assessment of a civil penalty to the department of public  
4 34 safety within thirty days of the penalty being assessed.

4 35 4. The civil penalty shall be collected by the clerk of  
5 1 the district court and shall be distributed as provided in  
5 2 section 602.8105, subsection 4.

5 3 Sec. 5. Section 602.8105, subsection 4, Code 2005, is  
5 4 amended to read as follows:

5 5 4. The clerk of the district court shall collect a civil  
5 6 penalty assessed against a retailer pursuant to section  
5 7 126.23A. Any moneys collected from the civil penalty shall be  
5 8 distributed to the state, ~~or a political subdivision of the~~  
~~5 9 state as provided in to the city or county that brought the~~  
5 10 ~~enforcement action for a violation of section 126.23A,~~  
5 11 ~~subsection 7.~~

5 12 Sec. 6. Section 714.7C, Code 2005, is amended to read as  
5 13 follows:

5 14 714.7C THEFT OF PSEUDOEPHEDRINE == ENHANCEMENT.

5 15 Notwithstanding section 714.2, subsection 5, a person who  
5 16 commits a simple misdemeanor theft of more than ~~two packages~~  
5 17 ~~one package of a product containing any of the following~~  
5 18 ~~pseudoephedrine commits a serious misdemeanor+.~~

5 19 1. ~~Pseudoephedrine as the product's sole active~~  
5 20 ~~ingredient.~~

5 21 2. ~~Pseudoephedrine in combination with other active~~  
5 22 ~~ingredients.~~

5 23 ~~A simple misdemeanor theft of more than two packages~~  
5 24 ~~containing pseudoephedrine as the products' sole active~~  
5 25 ~~ingredient which are in liquid form does not constitute a~~  
5 26 ~~serious misdemeanor under this section.~~

5 27 Sec. 7. Section 805.8C, subsection 6, Code 2005, is  
5 28 amended by striking the subsection and inserting in lieu  
5 29 thereof the following:

5 30 6. PSEUDOEPHEDRINE SALES VIOLATIONS. For violations of  
5 31 section 126.23A, subsection 2, by an employee of a retailer or  
5 32 a purchaser, the scheduled fine is as follows:

5 33 a. If the violation is a first offense, the scheduled fine  
5 34 is one hundred dollars.

5 35 b. If the violation is a second offense, the scheduled  
6 1 fine is two hundred fifty dollars.

6 2 c. If the violation is a third or subsequent offense, the  
6 3 scheduled fine is five hundred dollars.

6 4 Sec. 8. Section 811.2, subsection 1, paragraph e,  
6 5 unnumbered paragraph 2, Code 2005, is amended to read as  
6 6 follows:

6 7 Any bailable defendant who is charged with unlawful  
6 8 possession, manufacture, delivery, or distribution of a  
6 9 controlled substance or other drug under chapter 124 and is  
6 10 ordered released shall be required, as a condition of that  
6 11 release, to submit to a substance abuse evaluation and follow  
6 12 any recommendations proposed in the evaluation for appropriate  
6 13 substance abuse treatment. However, if a bailable defendant  
6 14 is charged with manufacture, delivery, possession with the  
6 15 intent to deliver, or distribution of methamphetamine, its  
6 16 salts, optical isomers, and salts of its optical isomers, the  
6 17 defendant shall, in addition to a substance abuse evaluation,  
6 18 remain under supervision and be required to undergo random  
6 19 drug tests as a condition of release.

6 20 Sec. 9. EFFECTIVE DATES. This Act takes effect sixty days  
6 21 from the date of enactment or July 1, 2005, whichever is  
6 22 earlier. However, the section of this Act amending section  
6 23 811.2 and the portion of the section of this Act amending  
6 24 section 124.212, subsection 4, which makes all ephedrine  
6 25 products schedule V controlled substances take effect upon  
6 26 enactment.

#### 6 27 EXPLANATION

6 28 This bill makes most precursor substances to amphetamine  
6 29 and methamphetamine schedule V controlled substances.

6 30 The bill makes all products containing ephedrine and  
6 31 phenylpropanolamine, and most pseudoephedrine products, a  
6 32 schedule V controlled substance.

6 33 The bill limits a retailer to selling pseudoephedrine  
6 34 products which contain 240 milligrams or less of  
6 35 pseudoephedrine, unless the retailer is a pharmacy and the  
7 1 product is sold as a schedule V controlled substance.

7 2 RETAILER. Under the bill, a retailer shall not sell and a  
7 3 person shall not purchase in a 24-hour period more than one  
7 4 package of a product containing pseudoephedrine. The bill

7 5 requires a purchaser to present a government-issued photo  
7 6 identification, sign a logbook, and input the purchaser's name  
7 7 and address into the logbook prior to purchase. A certified  
7 8 peace officer shall have access to the logbook under the bill.  
7 9 If a retailer sells a pseudoephedrine product, the bill  
7 10 requires the product to be displayed in a locked cabinet or  
7 11 behind a sales counter where the public is unable to reach the  
7 12 product and where the public is not permitted.

7 13 Under the bill a retailer shall not sell more than 4,000  
7 14 milligrams of pseudoephedrine to a person within a 30-day  
7 15 period.

7 16 The bill requires that a retailer shall also provide  
7 17 notification in a clear manner that Iowa law prohibits the  
7 18 purchase of more than one package containing pseudoephedrine  
7 19 unless the purchase is made through a pharmacist.

7 20 The bill prohibits a political subdivision of the state  
7 21 from adopting an ordinance regulating the display or sale of  
7 22 products containing pseudoephedrine.

7 23 PHARMACY. The bill provides that a pharmacy that sells a  
7 24 product containing 240 milligrams or less of pseudoephedrine  
7 25 shall comply with the provisions of the bill with respect to  
7 26 the sale of such products.

7 27 For all other products that contain more than 240  
7 28 milligrams of pseudoephedrine, the bill requires the product  
7 29 to be considered a schedule V controlled substance and to be  
7 30 distributed through a pharmacy. Iowa administrative code rule  
7 31 657-10.31 establishes the rules for dispensing a schedule V  
7 32 controlled substance in a pharmacy. The rule requires the  
7 33 distribution be regulated by pharmacists, and be distributed  
7 34 only for a medical purpose. A schedule V controlled substance  
7 35 does not require a prescription, but must be kept off public  
8 1 access shelves. The rule also limits the amount and frequency  
8 2 of purchase and requires presentation of an identification and  
8 3 a signature before purchase. The rule prohibits a person  
8 4 under the age of 18 from purchasing a schedule V product.

8 5 Under the bill a pharmacy shall also not sell more than  
8 6 4,000 milligrams of schedule V pseudoephedrine to a person  
8 7 within a 30-day period, without a prescription for an excess  
8 8 amount.

8 9 CRIMINAL OFFENSE. An employee of a retailer or a purchaser  
8 10 who commits a violation of Code section 126.23A, subsection 2,  
8 11 in the bill commits a simple misdemeanor punishable by a  
8 12 scheduled fine. For a first offense the scheduled fine is  
8 13 \$100, for a second offense the scheduled fine is \$250, and for  
8 14 a third or subsequent offense the scheduled fine is \$500. The  
8 15 bill also increases the theft of any pseudoephedrine product  
8 16 from a simple misdemeanor to a serious misdemeanor, if the  
8 17 value of the theft is \$200 or less.

8 18 CIVIL PENALTY. Upon a hearing, if a retailer or an  
8 19 employee of a retailer violates the bill, the state, city, or  
8 20 county enforcing the provisions of the bill shall assess a  
8 21 civil penalty against the retailer in the amount of \$300 for a  
8 22 first violation. For a second violation within two years, the  
8 23 civil penalty shall be \$1,500. For a third violation within a  
8 24 period of three years, the retailer shall be assessed a civil  
8 25 penalty in the amount of \$2,000, and may be prohibited from  
8 26 selling pseudoephedrine for a period of up to three years.  
8 27 For a fourth or subsequent violation within a period of three  
8 28 years, the retailer shall be assessed a fine of \$3,000, and  
8 29 the retailer shall be prohibited from selling pseudoephedrine  
8 30 products for a period of three years.

8 31 BAIL RESTRICTIONS. The bill requires that a person charged  
8 32 with the manufacture, delivery, or possession with intent to  
8 33 deliver, or distribution of methamphetamine, be supervised and  
8 34 be required to undergo random drug tests as a condition of  
8 35 release on bail.

9 1 ADMINISTRATIVE SUBPOENA == INSPECTION. The bill permits a  
9 2 certified peace officer with the approval of the officer's  
9 3 chief law enforcement officer to issue a subpoena duces tecum  
9 4 requiring a pharmacy to produce any records relating to  
9 5 schedule V pseudoephedrine products. The bill also permits a  
9 6 certified peace officer to review the records of a retailer  
9 7 that sells pseudoephedrine without the issuance of a subpoena.

9 8 EFFECTIVE DATES. The bill takes effect 60 days from the  
9 9 date of enactment or July 1, 2005, whichever is sooner.  
9 10 However, the section of the bill amending Code section 811.2  
9 11 on bail and the portion of the bill making all ephedrine  
9 12 products schedule V controlled substances take effect upon  
9 13 enactment.

